Supreme Court, U. S.
FILED
MAY 10 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-5781

FRANK L. RAKAS and LONNIE L. KING,
Petitioners,

v.

PEOPLE OF THE STATE OF ILLINOIS,
Respondents.

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT

BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

Page

OPINIONS BELOW 1
JURISDICTION 2
QUESTIONS PRESENTED 2
CONSTITUTIONAL PROVISIONS INVOLVED 2
STATEMENT 3
SUMMARY OF ARGUMENT 7
ARGUMENT 8
I. A PASSENGER LEGITIMATELY IN AN AUTOMOBILE, BY VIRTUE OF HIS PRESENCE, HAS STANDING TO CHALLENGE THE LEGALITY OF A POLICE SEARCH OF THAT AUTOMOBILE 8
A. Introduction 8
B. A person legitimately on non-public premises has a reasonable expectation of privacy with regards thereto and, therefore, has standing to challenge a search of those premises 9
C. There is no logical difference, with respect to standing, between a person legitimately present in a fixed structure and one in an automobile 11
II. AS THE "TARGETS" OF THE POLICE SEARCH, PETITIONERS HAVE STANDING TO OBJECT TO THE LEGALITY OF THE SEARCH 14
CONCLUSION 18

TABLE OF AUTHORITIES

Page

Cases:

Alderman v. United States, 394 U.S. 165, 89 S. Ct. 961, 22 L.Ed.2d 176 (1969) 5,16

Brown v. United States, 411 U.S. 223, 93 S. Ct. 1565, 36 L.Ed.2d 208 (1973) 10

Bumper v. North Carolina, 391 U.S. 543, 88 S. Ct. 1788, 20 L.Ed.2d 797 (1968) 15

Bustamonte v. Schneckloth, 448 F.2d 699, (9th Cir., 1971), reversed on other grounds, 412 U.S. 218, 93 S. Ct. 2041, 36 L.Ed.2d 854 (1973) 13

Carroll v. United States, 267 U.S. 132, 45 S. Ct. 280, 69 L.Ed. 543 (1925) 12

Combs v. United States, 408 U.S. 224, 92 S. Ct. 2284, 33 L.Ed.2d 308 (1972) 9

Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, 88 S. Ct. 1472, 20 L.Ed.2d 538 (1968) 12

Hodges v. State, 267 So.2d 798 (Ala. 1972) 13

Jones v. United States, 362 U.S. 257, 80 S. Ct. 725, 4 L.Ed.2d 697, 78 A.L.R. 2d 233 (1960) ... 7,9-10,12,15,16

Katz v. United States, 389 U.S. 347, 88 S. Ct. 507, 19 L.Ed.2d 576 (1967) 9

Mancusi v. DeForte, 392 U.S. 364, 88 S. Ct. 2120, 20 L.Ed.2d 1154 (1968) 11

Mullins v. State, 35 Md. App. 605, 371 A.2d 713 (1977) .. 13

Paxton v. State, 263 N.E.2d 636 (Ind. St. Ct., 1970) 13

People v. Marshall, 25 Mich. App. 376, 181 N.W.2d 578 (1970) 13

People v. Rakas, 46 Ill. App. 3d 569, 360 N.E.2d 1252 (3rd Dist., 1977) 1,6

People v. Smith, 35 Misc. 2d 533, 230 N.Y.S.2d 894 (1962) 13

Rios v. United States, 364 U.S. 253, 80 S. Ct. 1431, 4 L.Ed.2d 1688 (1960) 12

South Dakota v. Opperman, 428 U.S. 364, 96 S. Ct. 3092, 49 L.Ed.2d 1000 (1976) 11

State v. Bresolin, 13 Wash. App. 386, 534 P.2d 1394 (1975) 13

State v. Gaines, 40 Ohio App. 2d 244, 318 N.E.2d 857 (1974) 13

State v. Hatten, 561 S.W.2d 706 (Mo. App., 1978) 13

State v. Heath, 222 Kan. 50, 563 P.2d 418 (1977) 13

State v. Hink, 6 Wash. App. 374, 492 P.2d 1053 (1972) 16

State v. Osborn, 200 N.W.2d 798 (Iowa S. Ct. 1972) 13

State v. Patterson, 252 So.2d 398 (Fla. App. 1971) 13

State v. Perkins, 543 S.W.2d 805 (Mo. App. 1976) 13

United States v. Alewelt, 532 F.2d 1165 (7th Cir. 1976) ... 16

United States v. Chadwick, 433 U.S. 1, 97 S. Ct. 2476, 53 L.Ed.2d 538 (1977) 11

United States v. Cobb, 432 F.2d 716 (4th Cir. 1970) 16

United States v. Holmes, 521 F.2d 859 (5th Cir. 1975), affirmed in relevant part on rehearing *en banc*, 537 F.2d 227 (5th Cir. 1976) 13

United States v. Jeffers, 342 U.S. 48, 72 S. Ct. 93, 96 L.Ed.2d 59 (1951) 10,16

United States v. Lisk, 422 F.2d 228 (7th Cir. 1975) *cert. den.*, 423 U.S. 1708, 96 S. Ct. 865, 47 L.Ed.2d 89, on rehearing following remand, 559 F.2d 1165 (7th Cir. 1976) 16

United States v. Ortiz, 422 U.S. 891, 95 S. Ct. 2585, 45 L.Ed.2d 623 (1975) 11

United States v. Peisner, 311 F.2d 94, 5 A.L.R.3d 1196 (4th Cir. 1963) 13

United States v. Rosenberg, 416 F.2d 680 (7th Cir. 1969) 16

United States v. Tussell, 441 F. Supp. 1092 (M.D. Penn. 1977) 13

Warden v. Hayden, 387 U.S. 294, 87 S. Ct. 1642, 18 L.Ed.2d 782 (1967) 9

Wing v. State, 490 P.2d 1376 (Okla. Cr. 1971) 13

Constitutional Provisions:

United States Constitution, Amendment IV 2

United States Constitution, Amendment XIV, Section 1 3

Miscellaneous:

Grant, "Standing to Contest Illegal Searches and Seizures", 46 Mississippi Law Journal 147 (1975) 14

Gutterman, "A Person Aggrieved: Standing to Suppress Illegally Seized Evidence in Transition," 23 Emory Law Journal 111, (1974) 14

White and Greenspan, "Standing to Object to Search and Seizure," 118 University of Pennsylvania Law Review 333 (1970) 14

Young, "Defendant Whose Property is Seized from Custody of Third Party has Standing to Challenge the Seizure But Not the Search," 64 Georgetown Law Journal 1187 (1976) 14

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OPINIONS BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, is reported at 46 Ill. App. 3d 569, 360 N.E.2d 1252 (1977) and is reproduced in the Appendix (hereinafter "A") at pages A. 26-30. Also appearing in the Appendix at A. 31 is the unreported order of the Appellate Court of Illinois, Third Judicial District, denying the petition for rehearing. The order of the Illinois Supreme Court denying leave to appeal is likewise unreported and appears at A. 32.

JURISDICTION

The order of the Illinois Supreme Court denying leave to appeal was entered on September 30, 1977 (A. 32). The Petition for a Writ of Certiorari was timely filed on November 25, 1977, and it was granted on March 20, 1978. The jurisdiction of this court rests on 28 U.S.C. §1357(3).

QUESTIONS PRESENTED

1. Whether passengers who were legitimately present in an automobile when it was stopped by police have standing to challenge the constitutionality of a warrantless search of that automobile.
2. Whether persons against whom a search is directed have a basis for standing to contest the search which is independent of the other recognized criteria for establishment of such standing.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the legal protection of the law.

STATEMENT

The Petitioners, Frank L. Rakas and Lonnie L. King, were convicted of armed robbery in the Circuit Court of Kankakee County, Illinois. The most significant evidence against them was a sawed-off rifle (People's Exhibit 1) identified by one of the robbery victims as being the same weapon used by the masked robbers (R168).[1]

This rifle was the subject of a Motion to Suppress filed by Petitioners prior to trial wherein it was asserted that the evidence had been illegally seized by police during a search of an automobile in which the Petitioners were, at that time, riding as passengers (A. 4-7). During the pre-trial hearing on the motion, the Petitioners and Police Officer Donald Sollers testified as defense witnesses.

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[1]The prefix "R" denotes a page from the transcript of the record of trial that has not been reproduced in the Appendix. Also, used herein is the prefix "RC" which refers to the portions of the common law record (*i.e.*, pleadings, motions, etc.) which have not been reproduced in the Appendix. References to the Appendix are made with the prefix "A".

Officer Sollers testified that, while on patrol, he spotted a purple Plymouth Roadrunner, occupied by two males and two females, which he thought might be the blue Roadrunner used as a getaway car by the two unknown male robbers (A. 15). The car he saw, however, had a different license number from that of the getaway car and lacked other described characteristics (A. 21). Nevertheless, he followed the car to a lounge where the four occupants — the Petitioners and their female companions — went inside for about forty minutes (A. 20-21). Sollers then telephoned the Sheriff's dispatcher and was told that one of the males, dressed in a blue shirt, matched the limited description given of one of the robbers (A. 17). [Testimony during the trial-in-chief established that the robbers wore ski masks (R165-166). Moreover, the clothing worn by the Petitioners when arrested (R195) did not match that described at trial as having been worn by the robbers (R163, 165-166, 172-173); nor did the preliminary police reports included in the record on appeal suggest that the police were looking for men dressed as were the Petitioners (RC18-21).]

After the Petitioners left the lounge and were again proceeding on the highway, an assembly of policemen stopped the car in which they were riding and ordered the occupants out at gunpoint (A. 17-18). The ensuing search of the automobile disclosed the rifle (A. 18). Before the search, none of the occupants were placed under arrest (A. 18), permission to conduct the search was not sought (A. 19), and the seized evidence was not visible from outside the car (A. 19).

The driver of the automobile was one of the Petitioners' female companions, Johnette M. Clontz (A. 8). The Petitioners both agreed on cross-examination that Ms. Clontz

was also the owner of the automobile in which they were riding as passengers (A. 11,14). Consequently, the prosecutor made an oral motion to dismiss Petitioners' Motion to Suppress on the ground that, since it was not their car, they had no standing to contest the validity of the search, and the matter was resolved adversely to the defense with the following brief discussion:

> "MR. HERZOG [Prosecutor]: We move to dismiss on the basis of *Alderman vs. United States,* 394 U.S. 165. The Supreme Court says that as to the Fourth Amendment, there is no standing to contest its validity under these circumstances. It has to be the one whose rights are violated — the aggrieved party — by the introduction of damaging evidence. It wasn't their [Petitioners'] car. It wasn't their shells. It wasn't their rifle. I think the only one that has standing would be Janette [sic] Clontz [owner] and she isn't here.
>
> MR. KUESTER [Defense counsel]: She isn't charged in this at this time. And I don't think they have to admit these are their items. I think they do have a standing which they have shown.
>
> THE COURT: What is the case?
>
> MR. KUESTER: I don't have a case available, but just because you are not the owner of the car doesn't mean you can't be aggrieved by them trying to admit something against you in a Court of law.
>
> THE COURT: The only point here is exactly what counsel said. The case cited says exactly what he says it said. It says that Defendants like these have no standing to contest the validity of the search. It wasn't their car. They had no control over it and you don't have any case that says the contrary.
>
> MR. KUESTER: I would like to tender a case.
>
> THE COURT: There isn't any case that says contrary.

MR. KUESTER: I believe there are and I could locate some I believe. The whole standing area has been broadened and we are talking about the search of an automobile, the occupants, and the fact you don't own it doesn't mean you can't be aggrieved and this stuff can't be used against you.

THE COURT: Well, I believe the law says what counsel says it says. These men have no standing to contest the validity of the search. It wasn't their car. They have no control over it. The only person that could complain would be the one who was driving it at the time or who owned the car.

Motion to Suppress is denied.

Defendants remanded to custody." (A. 23-24).

On appeal, the Appellate Court of Illinois disposed of Petitioners' contentions in this manner:

> Of the other issues raised by defendants several can be summarily decided. Firstly, defendants argue that the trial court erred in denying their motion to suppress evidence seized during an unlawful search of an automobile not belonging to either of the defendants but in which they were riding as passengers of a girlfriend. We conclude, as the trial court did, that the defendants lacked standing to complain of the allegedly unlawful search and seizure. 46 Ill. App. 3d 569, 571, 360 N.E.2d 1252, 1253 (3rd Dist., 1977). (A. 27).

Finally, the denial of leave to appeal by the Illinois Supreme Court was made without comment.[2]

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[2]The trial court's rationale, affirmed by the Illinois reviewing courts, was predicated upon the belief that legal ownership or possession of the automobile was the deciding factor in the denial of standing to Petitioners. Additional evidence on the question of standing, therefore, was not deemed necessary. So, as a result, it was not revealed at the suppression hearing that the owner, Ms. Clontz, was actually the

(continued)

SUMMARY OF ARGUMENT

I.

The "legitimately on the premises" rule formulated by this Court in *Jones v. United States*, 362 U.S. 257, 80 S. Ct. 725, 4 L.Ed.2d 697, 78 A.L.R. 2d 233 (1960) furnishes a sufficient ground for the Petitioners' standing to challenge the legality of the search of the automobile in which they were passengers. Petitioners had a reasonable expectation of privacy by virtue of their presence in the automobile at the time of the search, and there is no logical reason not to apply the *Jones* rationale to an automobile search.

II.

The fact that the search was intentionally directed at the Petitioners furnishes another compelling ground for their standing. This ground, termed the "directed-at theory", finds support as an independent basis for standing in the decisions of this Court, although this Court has not expressly so held. Moreover, the directed-at theory, of all grounds for standing, is the most consistent with the

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(footnote continued from preceding page)

former wife of Lonnie King. However, contained in the common law record of this case is a transcript of the police interrogation of Ms. Clontz wherein she stated that King's true name was Douglas Woodrow Clontz and that she had been married to him for four or five years (RC37). The presentence report also indicates that Johnette Clontz is King's former wife (RC115). This relationship between King and Clontz explains the statement made by King during the suppression hearing that he was with Ms. Clontz when she bought the car (A. 14).

purpose of the exclusionary rule in that it provides the maximum deterrent to unlawful police conduct.

ARGUMENT

I.

A PASSENGER LEGITIMATELY IN AN AUTOMOBILE, BY VIRTUE OF HIS PRESENCE, HAS STANDING TO CHALLENGE THE LEGALITY OF A POLICE SEARCH OF THAT AUTOMOBILE.

A. Introduction.

The central issue in this case is whether the Petitioners, who are legitimately riding in an automobile owned by someone else, have standing to object to a warrantless police search of that automobile. This Court is not asked to determine the validity of the search since the rulings by the state courts were limited to the narrow question of standing and the legality of the search has yet to be addressed by a lower court. The relief sought, then, is an order requiring the state court to decide the ultimate question of whether the search was lawful.

The Petitioners believe they have standing to raise this question because of their legitimate presence in the automobile at the time of the search. Standing will not be claimed on the basis of any proprietary or possessory interests in the automobile, nor do the Petitioners rely upon "automatic" standing arising from the nature of the charges against them.

B. A person legitimately on non-public premises has a reasonable expectation of privacy with regards thereto and, therefore, has standing to challenge a search of those premises.

This Court has recognized that "the principal object of the Fourth Amendment is the protection of privacy rather than property." *Warden v. Hayden*, 387 U.S. 294, 87 S. Ct. 1642, 18 L.Ed.2d 782, 790 (1967). *See also, Katz v. United States*, 389 U.S. 347, 350-352, 88 S. Ct. 507, 19 L.Ed.2d 576, 581-582 (1967). Accordingly, it is appropriate in determining whether one has standing to challenge the legality of a search to evaluate the reasonableness of his expectation of privacy which he asserts was violated. *See Combs v. United States*, 408 U.S. 224, 227, 92 S. Ct. 2284, 28 L.Ed.2d 308, 311 (1972). In making such an evaluation, though, property interests are of secondary importance.

Since this Court's opinion in *Jones v. United States*, 362 U.S. 257, 80 S. Ct. 725, 4 L.Ed.2d 697, 78 A.L.R. 2d 233 (1960), standing to challenge the legality of a search need no longer depend solely upon often subtle property-law distinctions. In *Jones*, this Court ruled that one seeking to contest a search need not first claim proprietary or possessory interests in either the property seized or the premises searched. With regard to previously relied upon distinctions such as "lessee," "licensee," "invitee," and "guest," it was clearly stated:

> *A fortiori* we ought not to bow to them in the fair administration of the criminal law. To do so would not comport with our justly proud claim of the procedural protections accorded to those charged with crime. No just interest of the Government in the effective and

> rigorous enforcement of the criminal law will be hampered by recognizing that anyone legitimately on premises where a search occurs may challenge its legality by way of a motion to suppress, when its fruits are proposed to be used against him. 362 U.S. 257, 267, 80 S. Ct. 724, 734, 4 L.Ed.2d 697, 706.

This Court's rejection of standing tests based upon property-law concepts was reaffirmed in *Brown v. United States*, 411 U.S. 223, 229, 36 L.Ed.2d 208, 214, 93 S. Ct. 1565 (1973) wherein it was noted the present test is that a defendant would have standing where either (a) he was on the premises at the time of the contested search, (b) he alleges a proprietary or possessory interest in the premises, or (c) he is charged with an offense which includes, as an essential element of the offense charged, possession of the seized evidence at the time of the search and seizure.

The principle underlying the three indicia of standing noted in *Brown v. United States*, 411 U.S. 223, 229, 93 S. Ct. 1565, 1569, 36 L.Ed.2d 208, 214 (1973) is expectation of privacy. Focusing particularly upon the first indicium listed in *Brown*, the formulation of the general rule that one legitimately on the premises searched has standing is a practical recognition that such an individual has a reasonable expectation of privacy. And, with regard to such an expectation, for the purpose of standing there is no legal distinction between the property owner and a guest who is present at the time of the police intrusion. Of course, the owner's expectation of privacy normally continues even in his absence, whereas the guest may lose his expectation when he departs the premises. *But see, United States v. Jeffers*, 342 U.S. 48, 72 S. Ct. 93, 96 L.Ed.2d 59 (1951).

In any event, where the non-owner was present on the premises, as in the instant case, property-law concepts are without significance.[3]

C. There is no logical difference, with respect to standing, between a person legitimately present in a fixed structure and one in an automobile.

To be sure, there are Fourth Amendment distinctions between automobiles and homes or offices. This Court has said that, generally, one has a diminished expectation of privacy in a motor vehicle, *e.g., United States v. Chadwick*, 433 U.S. 1, 12, 97 S. Ct. 2476, 2484, 53 L.Ed.2d 538, 549 (1977) and *South Dakota v. Opperman*, 428 U.S. 364, 367-369, 96 S. Ct. 3092, 3095-3097, 49 L.Ed.2d 1000, 1004-1005 (1976). However, it has been clearly stated: "A search, even of an automobile, is a substantial invasion of privacy." *United States v. Ortiz*, 422 U.S. 891, 95 S. Ct. 2585, 2588, 45 L.Ed.2d 623, 629 (1975). Moreover, differences between mobile vehicles and buildings have been drawn, not to resolve questions of standing, but to explain the need for less stringent requirements in

[3]Petitioners are mindful of Mr. Justice Black's dissent in *Mancusi v. DeForte*, 392 U.S. 364, 375-776, 88 S. Ct. 2120, 2127-2128, 20 L.Ed.2d 1154, 1164 (1968) wherein he suggests that there may be exceptions to the legitimately-on-the-premises rule if circumstances are such that there is no reasonable expectation of privacy. This possibility is not discussed, however, because any exceptions to the rule would have to be isolated, as in the case of Mr. Justice Black's example of a janitor; and, surely, the Petitioners' situation as passengers in a car traveling on the highway is not at all comparable to that of a mere janitor in a large office building.

warrantless searches of vehicles. Hence, Fourth Amendment protections most certainly do apply to private areas within automobiles, *e.g.*, *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216, 88 S. Ct. 1472, 20 L.Ed.2d 538 (1968) and *Rios v. United States*, 364 U.S. 253, 80 S. Ct. 1431, 4 L.Ed.2d 1688 (1960).[4]

Thus, a person legitimately in an automobile does have a reasonable expectation of privacy from unconstitutional governmental intrusion. Accordingly, such a person would have standing to question the legality of governmental intrusions, and, under the rationale of *Jones*, it is immaterial whether the person is the owner of the car or a passenger. Since, in *Jones*, the differentiation between the privacy expectations of owner and guest was considered insignificant for purposes of standing, the issue of standing cannot

[4]The *Dyke* case is particularly interesting because the factual situation therein appears quite close to that at bar. In *Dyke*, like here, a search disclosed a rifle under the seat of a car, and, also as in the instant case, this finding was used as evidence against passengers in the automobile. Unfortunately, the standing of those passengers to contest the search was not discussed in *Dyke*.

The *Rios* case is similarly noteworthy because it involved the search of a taxicab, and the evidence thus obtained led to the conviction of a passenger in the taxicab. Although the *Rios* opinion only briefly mentioned standing, it was obviously assumed that this passenger could properly contest the search.

It might also be noted that all of the occupants of an automobile which is stopped on the highway and searched by police would have their "right of free passage" violated. In *Carroll v. United States*, 267 U.S. 132, 154, 45 S. Ct. 280, 285, 69 L.Ed. 543, 552 (1925), it was stated:

> ". . . those lawfully within the country, entitled to use the public highways, have a right of free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

be decided here on the basis of such a differentiation without resurrecting the property-law-based standing test laid to rest by *Jones*. Such a resurrection would inevitably give rise to a plethora of litigation and would revive a standing test not consistent with the Fourth Amendment interest sought to be protected.

Indeed, most courts which have been called upon to decide this issue have had no difficulty applying the legitimately-on-the-premises rule to automobile passengers in the same manner as it has been applied to persons challenging the legality of searches of fixed structures.[5] On the other hand, those courts that have reached the opposite result did so without compelling logic and have simply reverted to discarded property-law concepts.[6]

Therefore, the Petitioners are not seeking an extension of the legitimately-on-the-premises rule to automobiles but

[5]*See, United States v. Holmes*, 521 F.2d 859, 867 (5th Cir. 1975), affirmed in relevant part on rehearing *en banc*, 537 F.2d 227 (5th Cir. 1976); *Bustamonte v. Schneckloth*, 448 F.2d 699, 700 fn. 1 (9th Cir. 1971), reversed on other grounds, 412 U.S. 218, 93 S. Ct. 2041, 36 L.Ed.2d 854 (1973); *United States v. Peisner*, 311 F.2d 94, 105, 5 A.L.R. 3d 1196, 1211 (4th Cir. 1963); *Mullins v. State*, 35 Md. App. 605, 371 A.2d 713, 716 (1977); *State v. Bresolin*, 13 Wash. App. 386, 534 P.2d 1394, 1402 (1975); *Wing v. State*, 490 P.2d 1376 (Okla. Cr. 1971); and *Paxton v. State*, 263 N.E.2d 636, 642 (Ind. St. Ct. 1970). *See also, United States v. Tusseli*, 441 F. Supp. 1092, 1102 (M.D. Penn. 1977); *State v. Gaines*, 40 Ohio App. 2d 244, 318 N.E.2d 857, 861 (1974); *Hodges v. State*, 267 So.2d 798, 802 (Ala. 1972); *State v. Osborn*, 200 N.W.2d 798, 803-806 (Iowa S. Ct. 1972); *People v. Marshall*, 25 Mich. App. 376, 181 N.W.2d 578, 580 (1970); and *People v. Smith*, 35 Misc. 2d 533, 230 N.Y.S.2d 894, 900 (1962).

[6]*E.g., State v. Heath*, 222 Kan. 50, 563 P.2d 418, 420 (1977); *State v. Patterson*, 252 So.2d 398, 400 (Fla. App. 1971); and *State v. Perkins*, 543 S.W.2d 805, 807-808 (Mo. App. 1976). [But see, *State v. Hatten*, 561 S.W.2d 706, 712 (Mo. App. 1978).]

merely a recognition that the rule has already been properly applied to automobiles. Such an application is fully in accord with the decisions of this Court and with the vast majority of lower court opinions; and Petitioners are justified in asserting that the Illinois courts erred by denying them standing.

II.

AS THE "TARGETS" OF THE POLICE SEARCH, PETITIONERS HAVE STANDING TO OBJECT TO THE LEGALITY OF THE SEARCH.

While the legitimately-on-the-premises rule is sufficient to accord the Petitioners' standing to object to the search in this case, there is another compelling ground for their standing arising from the fact that they were the "objects" or "targets" of the instant police action. Standing can also be conferred upon them through application of what has been termed by various legal commentators as the "target doctrine" or the "directed at theory."[7]

Obviously, Petitioners Rakas and King were the actual targets of the police search. The police investigation was

[7] *E.g.*, Young, "Defendant Whose Property is Seized from Custody of Third Party has Standing to Challenge the Seizure But Not the Search", 64 Georgetown Law Journal 1187, 1193-1195 (1976); Grant, "Standing to Contest Illegal Searches and Seizures", 46 Mississippi Law Journal 147-168 (1975); Gutterman, "A Person Aggrieved: Standing to Suppress Illegally Seized Evidence in Transition", 23 Emory Law Journal 111, 134 (1974); White and Greenspan, "Standing to Object to Search and Seizure", 118 University of Pennsylvania Law Review 333, 349-356.

aimed at the apprehension of the two men who robbed the Robert Hall store; and, since there was no reason prior to the search to suspect the involvement of other people, particularly women, the police intrusion was clearly directed solely at the Petitioners. That the police were not concerned with the Petitioners' female companions, one of whom was the owner of the search automobile, was made quite clear in the testimony of Officer Donald Sollers, the policeman who spotted the suspected automobile after the robbery. According to Sollers, when he telephoned his observations to the Sheriff's Office, he did not give descriptions of the two women he saw in the automobile, nor was he asked for their descriptions (A. 18). Consequently, the search of the automobile owned by Johnette Clontz must unquestionably be viewed as having been directed at Rakas and King, not at Ms. Clontz or the other woman passenger.

Although the directed-at theory, which affords the Petitioners a second ground for standing on the facts at bar, has not expressly been held by this Court to be an independent basis for standing, the following rationale does appear in *Jones v. United States*, 362 U.S. 257, 80 S. Ct. 725, 4 L.Ed.2d 697 (1960):

> In order to qualify as a "person aggrieved by an unlawful search and seizure" one must have been a victim of a search or seizure, *one against whom the search was directed*, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else. (emphasis added). 362 U.S. at 261, 80 S. Ct. at 730-731, 4 L.Ed.2d at 702.

Furthermore, this Court in *Bumper v. North Carolina*, 391 U.S. 543, 548 [footnote 11], 88 S. Ct. 1788, 1791, 20

L.Ed.2d 797, 802 (1968) noted that the language from *Jones* emphasized above supplied an alternative basis for standing for the petitioner therein. Therefore, advocates of the directed-at theory have concluded that the *Jones* language does lend support to the theory. *See,* Mr. Justice Fortas' separate opinion in *Alderman v. United States*, 394 U.S. 165, 207-209, 89 S. Ct. 961, 985, 22 L.Ed.2d 176, 206-207 (1969); *United States v. Cobb*, 432 F.2d 716, 719-720 (4th Cir. 1970); *United States v. Rosenberg*, 416 F.2d 680, 682 (7th Cir. 1969) and *State v. Hink*, 6 Wash. App. 374, 492 P.2d 1053 (1972).

More recently, this Court's decision in *United States v. Jeffers*, 342 U.S. 48, 72 S. Ct. 93, 96 L.Ed.2d 69 (1951) has likewise been suggested as supportive of the directed-at theory. In *Jeffers*, the defendant was held to have standing to contest the search of his aunt's hotel room where narcotics were found and seized. Commenting on the theory, then Judge Stevens noted in *United States v. Lisk*, 422 F.2d 228, 232-233 (7th Cir. 1975) (on petition for rehearing), *cert. den.*, 423 U.S. 1078, 96 S. Ct. 865, 47 L.Ed.2d 89 (1976) that standing in *Jeffers* might have been sustained on several alternative theories, including the directed-at theory, although he noted that, in later cases, this Court has cited *Jeffers* as if it had been decided on one of the other theories. *See also*, the recent opinion in the *Lisk* case, on rehearing following remand, at 559 F.2d 1108 (7th Cir. 1977) and *United States v. Alewelt*, 532 F.2d 1165, 1167 (7th Cir. 1976).

While case law support for the directed-at theory may not be plentiful, the theory has been endorsed by legal commentators (See footnote 8), and it is unquestionably that theory of standing which is most consistent with the

purpose of the exclusionary rule, *i.e.*, to deter unlawful police conduct. Indeed, it provides the maximum deterrent effect because the police are made aware that evidence illegally obtained by them may be excluded on motion of the person who was the target of their unlawful intrusion, notwithstanding considerations which limit other standing theories, such as property interests or whether the movant was on the searched premises. Furthermore, the directed-at theory would also deter police illegality that violates the privacy of individuals who probably would not themselves be in a position to complain of that illegality because not arrested.

It is, therefore, submitted that, even if it is not enough to base the Petitioners' standing to challenge this search simply upon their presence in the automobile, such standing must still be accorded because the search was also intentionally directed at the Petitioners.

CONCLUSION

For the reasons stated, the state court's erroneous judgment, that Petitioners lacked standing, should be reversed and the case remanded for a determination as to the legality of the search which the Petitioners sought to challenge.

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